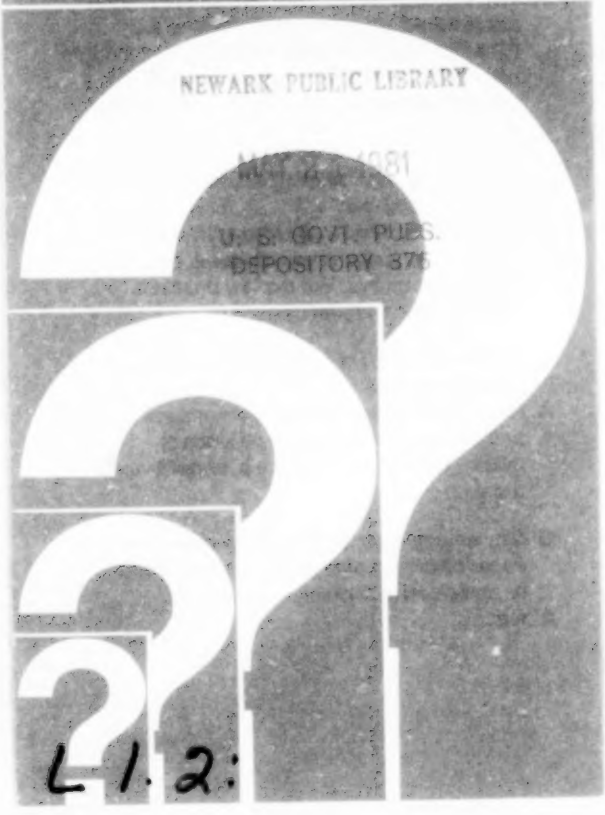
J 57/34

Job Rights for Reservists and Members of the National Guard

U.S. Department of Labor
Labor-Management Services Administration
Office of Veteran's Reemployment Rights



NEWARK PUBLIC LIBRARY
MAY 22 1981
U.S. GOVT. PUBS.
DEPOSITORY 376
L 1.2:

National Guard members and reservists take part in weekly, weekend, monthly, and annual training sessions to keep current with their military responsibilities.

Almost all trainees need time off from employment for the training. Absences, lasting from a few hours to a few months, call for temporary adjustments by the trainee and the employer.

The U.S. Department of Labor's Office of Veterans' Reemployment Rights offers reservists and National Guard members advice and assistance in exercising their job rights under federal law. Here are some of the questions most often asked about those rights:

Q *Is an employer required to excuse a worker for military training duty?*

A Yes. National Guard members and reservists are required to take training. Federal law (Chapter 43 of Part III of Title 38, U.S. Code) says the reservist must request leave for military training duty and the employer must grant it.

Q *Are employees in all kinds of work covered by this federal law?*

A Yes. The law covers employees in private industry and employees of federal, state and local governments. But the law does not apply to temporary employees.

Q *Does the branch of service make any difference?*

A No. Job protection extends to members of all branches of service and to all kinds of military training as long as it is under federal orders.

Q *May an employer discharge an employee because of his or her reserve membership or participation in reserve activities?*

A No.

Q *In addition to protection against discharge, are any other employment rights or benefits protected by the law?*

A Yes. The employee cannot be denied promotion or any other benefits or advantages of employment because of his or her reserve obligation. This may mean that the reservist has a right to work a 40-hour week, may be entitled to make up lost overtime, and may not be denied a promotion solely because reserve duty affects his or her work schedule.

Q *What about scheduling conflicts?*

A The employer is obliged to reschedule the reservist, if possible, to avoid conflicts between work and reserve or Guard training. Therefore, every reservist has a right to work a 40-hour week, if possible. This is why trainees should provide their employers with a schedule of duty as soon as possible.

Q *May a reservist be charged with overtime opportunities that he or she cannot accept because of training or duty?*

A No. Overtime opportunities must be equalized. This may require that make-up opportunities be provided to the trainee, if necessary.

Q *When does the employee have to return to work?*

A The employee must return to work at the start of the next regularly scheduled shift after expiration of the last calendar day necessary to travel home from training or after he or she has had reasonable time to rest.

Q *May the employer demand to know exactly when the employee will return?*

A No. It is reasonable for the employer to want this information but sometimes impossible for the trainee to furnish it. However, the employee should try to give the employer the approximate beginning and concluding dates of his or her training as well as the approximate travel time involved.

Q *Does the trainee lose the right to return to work if he or she delays reporting beyond the time prescribed under the law?*

A No. But the trainee will be subject to the employer's rules pertaining to explanations and discipline when an employee is absent from work.

Q *When and how should a trainee request military leave? Is it permissible to inform the employer at 5 p.m. Friday that he or she can't be in on Saturday because of training?*

A Yes. Such a request fulfills the legal requirement. But it doesn't make for sound employee-employer relations. Leave should be requested as far in advance as possible so the employer can plan adequately. No particular form is required, but it is recommended that the employer be given a written schedule of training dates.

Q *Is a formal application for reemployment required?*

A No. Employees on leave for training are not on a formal leave of absence. Consequently, they do not require "reemployment." It is more appropriate to say that they simply return to their jobs.

Q *What if an employee is disabled during training and is unable to perform his or her old job?*

A In most cases, disability extends the length of time an employee is allowed to return to work. Where the disability turns out to handicap the employee more or less permanently, the employer still has responsibilities to the employee. Such cases should be reviewed with a representative of the Labor Department's Office of Veterans' Reemployment Rights.

READEX MICROFILMED best copy available

Q *How about an employee's pay for time lost from work because of military training?*

A Employers are never required to pay for work that was not performed. Some employers as a matter of policy or contract do pay for time lost because of military training; others do not. Such payment is outside the scope of the law.

Q *What about vacation? Can an employee be forced to use vacation time for military training? Can he or she continue to earn vacation time while absent from work for training?*

A The question of vacation rights is very complex, and we hesitate to give any answer because it might not apply in all situations. If you have a specific question about your vacation rights, contact a representative of the Office of Veterans' Reemployment Rights.

Q *Where can National Guard members or reservists get more information or help if they feel their rights have been denied?*

A Contact the nearest Office of Veteran's Reemployment Rights, U.S. Department of Labor, Labor-Management Services Administration.

More Information Available at These Area Offices:

Atlanta, Ga. 30309
1365 Peachtree St., NE.
Tel: 404-881-4090

Boston, Mass. 02108
110 Tremont St.
Tel: 617-223-6736

Buffalo, N.Y. 14202
111 W. Huron St.
Tel: 716-846-4861

Chicago, Ill. 60604
175 W. Jackson Blvd.
Tel: 312-353-7264

Cleveland, Ohio 44199
1240 E. 9th St.
Tel: 216-522-3855

Dallas, Texas 75202
Griffin and Young Sts.
Tel: 214-767-6831

Denver, Colo. 80294
1961 Stout St.
Tel: 303-837-5061

Detroit, Mich. 48226
231 W. Lafayette St.
Tel: 313-226-6200

East Orange, N.J. 07018
576 Central Avenue
Tel: 201-645-3712

Hato Rey, Puerto Rico 00918
Carlos Chardon St.
Tel: 809-753-4441

Honolulu, Hawaii 96850
300 Ala Moana
Tel: 808-546-8984

Kansas City, Mo. 64106
911 Walnut St.
Tel: 816-374-5261

Los Angeles, Calif. 90012
300 N. Los Angeles St.
Tel: 213-688-4975

Miami, Fla. 33169
111 NW 183rd St.
Tel: 305-350-4611

Minneapolis, Minn. 55403
100 N. 6th St.
Tel: 612-725-2292

Nashville, Tenn. 37203
1808 West End Bldg.
Tel: 615-251-5906

New Orleans, La. 70130
600 South St.
Tel: 504-589-6173

New York, New York 10007
26 Federal Plaza
Tel: 212-264-1980

Philadelphia, Pa. 19106
601 Market St.
Tel: 215-597-4961

Pittsburgh, Pa. 15222
1000 Liberty Ave.
Tel: 412-644-2925

St. Louis, Mo. 63101
210 Tucker Blvd.
Tel: 314-425-4691

San Francisco, Calif. 94105
211 Main St.
Tel: 415-556-2030

Seattle, Wash. 98174
909 First Avenue
Tel: 206-442-5216

Washington, D.C. 20036
1730 K St., NW.
Tel: 202-254-6510